

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

vs.

MERCY MEDICAL, a corp.  
P. O. Box 1090  
101 Villa Drive  
Daphne, AL 36526,

Petitioner.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 91-148

FINAL ORDER

Mercy Medical, as lessee of a facility or facilities owned by the Special Care Facilities Financing Authority of the City of Daphne-Villa Mercy, applied for a general sales tax exemption certificate with the Department. The Department denied the exemption and Mercy Medical appealed to the Administrative Law Division. A hearing was conducted on January 21, 1993. Robert E. Gibney appeared for Mercy Medical. Assistant counsel Gwen Garner represented the Department.

The issue in dispute is whether Mercy Medical is entitled to a full sales and use tax exemption certificate pursuant to Code of Ala. 1975, §11-62-8. Section 11-62-8 is the tax exemption provision for municipal special health care facilities.

Mercy Medical is an Alabama non-profit corporation and is a tax exempt entity under §501(c)(3) of the Internal Revenue Code.

Mercy Medical operates a special health care facility and has its principle place of business in Daphne, Alabama. Mercy Medical also

operates a care facility (the Birches) in Fairhope, Alabama and is building two new medical facilities in the City of Mobile.

In 1979, the Alabama Legislature enacted the Municipal Special Health Care Facility Authority Act, Code of Ala. 1975, §11-62-1, et seq., with the stated purpose of providing investment funds to finance public health care facilities in Alabama.

The Special Care Facility Financing Authority of the City of Daphne-Villa Mercy (Villa Mercy was Mercy Medical's original name) was subsequently incorporated by the City of Daphne pursuant to the above Act. The Authority has issued bonds on three occasions and has used the bond proceeds to improve or construct facilities operated by Mercy Medical. Mercy Medical leases the facilities and pays the Authority rent sufficient to retire the bonds. The latest bond issue was for \$13,800,000.00 to be used to finance a new wing on the Daphne facility and the two new facilities in Mobile.

Mercy Medical applied for a full sales and use tax exemption in January, 1991 on the grounds that it was exempt from all sales and use tax under §11-62-8. Subsection (d) of §11-62-8 provides a sales and use tax exemption as follows:

(d) If, pursuant to any contractual arrangement between an authority and a user, any facility has been or is to be financed by a loan from such authority, then in such case the gross proceeds of the sale of any property used in the construction and equipment of such facility, regardless of whether such sale is to such authority, such user or any contractor or agent of either thereof, shall be exempt from the sales tax imposed by article 1 of chapter 23 of Title 40 and from all other sales and similar excise taxes now or hereafter levied on or with

respect to the gross proceeds of any such sale by the state or any county, municipality or other political subdivision or instrumentality of any thereof. Further, if, pursuant to any contractual arrangement between an authority and a user, any facility has been or is to be acquired by such authority and leased or sold to such user or has been or is to be financed by a loan from such authority, then in such case any property used in the construction and equipment of such facility, regardless of whether such property has been purchased by such authority, such user or any contractor or agent of either thereof, shall be exempt from the use tax imposed by article 2 of chapter 23 of Title 40 and all other use and similar excise taxes now or hereafter levied on or with respect to any such property by the state or any county, municipality or other political subdivision or instrumentality of any thereof. (underline added)

The Department refused to issue a blanket exemption certificate and Mercy Medical appealed to the Administrative Law Division.

The Department argued at the administrative hearing that the exemption certificate must be denied because the City of Fairhope and the City of Mobile both failed to pass the necessary resolutions approving the Authorities' actions in those jurisdictions as required by §11-62-1(8). However, Mercy Medical subsequently provided the Department with copies of the appropriate resolutions passed by both cities, and consequently, that issue is no longer in dispute.

The Department's second objection and the grounds on which the exemption was initially denied is that Mercy Medical is entitled to only a limited exemption under §11-62-8(d), not a blanket exemption.

The Department contends that Mercy Medical is entitled to a limited exemption only because §11-62-18(d) exempts a user (any qualified charitable organization operating a facility, such as Mercy Medical in this case) only if the property is "used in the construction and equipment" of a qualifying facility. I agree.

What was intended in subsection (d) by the words "construction and equipment of such facility" is not clear. A reasonable argument could be made that only materials used in the initial construction and equipping of a qualifying facility should be exempt.<sup>1</sup>

However, the legislative intent behind creating health care authorities was to provide for the construction of and continuing operation of adequate facilities for those in need, including orphans, the elderly, the sick, the physically disabled or handicapped, and the mentally ill or retarded. See, Code of Ala. 1975, §11-62-2. Thus, the exemption should be construed to apply to all property used in the initial construction and equipping of a facility, and also for the on-going operation of a qualifying facility.

"Equipment" is defined by the American Heritage Dictionary, Second College Ed., as follows: "1. The act of equipping . . . 2. Something with which a person, organization, or thing is

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<sup>1</sup> In its response, Mercy Medical stated that the exemption applies to "property and equipment used in the course of construction of the bond - finance capital improvements".

equipped". "Equip" is defined by the same source as follows:  
"1.a. To supply with necessities such as tools or provisions".  
Again, considering the broad purpose for the exemption, the exemption should be construed to include not only the facility itself and the permanent fixtures and machines used in the facility, but also all supplies and other items necessary for the day-to-day operation of the facility.

However, notwithstanding the broad range of materials covered, Mercy Medical is still exempt from sales or use tax only if the property is used in a qualifying facility.

Mercy Medical argues that it should be allowed the general exemption because the Department has issued general exemptions to health care authorities established under Code of Ala. 1975, §22-21-310, et seq. Mercy Medical contends that the health care authority exemption found at §22-21-333 is identical to the exemption in issue at §11-62-18, and consequently that it should be granted the same exemption.

Section 22-21-333 does contain the same sales and use tax exemption language as §11-62-18(d) for property purchased and used in the construction and equipment of a facility. However, §22-21-333 also contains general language not found in §11-62-8 stating that "all properties of an authority . . . shall be exempt from any and all taxation . . ., including, but without limitation to, license and excise taxes . . ." The Department construes that

phrase as granting a Title 22 authority a general exemption from all taxes. Consequently, health care authorities established under §22-21-310 are exempt from sales, use and all other taxes, whereas any authority or user governed by Title 11 is exempt under §11-62-18(d) only if the property is used in a qualifying facility. Mercy Medical may not purchase much that is not used in a qualifying facility, but if it does, sales tax is due.

The Department properly denied the general exemption. Mercy Medical should be issued a limited exemption certificate for the purchase of property used in the construction or on-going operation of any qualifying facility.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on August 25, 1993.

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BILL THOMPSON  
Chief Administrative Law Judge